

1  
2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8

9 LAFRANCE BEAL, )  
10 Petitioner, ) No. C 08-1705 TEH (PR)  
11 vs. )  
12 M. S. EVANS, Warden, ) ORDER OF DISMISSAL  
13 Respondents. ) AND GRANTING IN  
14 ) FORMA PAUPERIS  
14 MOTION

---

15 This is a petition for a writ of habeas corpus brought pro se by Petitioner  
16 pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state  
17 conviction. An earlier federal petition challenging the same conviction and  
18 sentence was denied on the merits on November 7, 2001. See Beal v. Plier, No.  
19 C 3:00-cv-04103 TEH (PR). Petitioner has filed a motion to proceed in forma  
20 pauperis (Docket No. 4) pursuant to 28 U.S.C. § 1915(a) which is now  
21 GRANTED. Petitioner's "application for waiver of court fees and costs," which  
22 is apparently a form used in state court, is DENIED as moot (docket no. 6).

23 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")  
24 was signed into law on April 24, 1996. Under AEDPA, a second or successive  
25 petition may not be filed in this Court unless Petitioner first obtains from the  
26 United States Court of Appeals for the Ninth Circuit an order authorizing this  
27 court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has not  
28 presented such an order from the Ninth Circuit to this Court. The petition

1 accordingly is DISMISSED without prejudice to refiling if petitioner obtains the  
2 necessary order. As such, the Clerk shall close the file and enter judgment in  
3 accordance with this order.

4 SO ORDERED.

5  
6 DATED: 01/21/09

  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THELTON E. HENDERSON  
United States District Judge